

PUBLIC DIRECT TESTIMONY

OF

QIN LIU

POLICY DEPARTMENT

TELECOMMUNICATIONS DIVISION

ILLINOIS COMMERCE COMMISSION

ICC ON ITS OWN MOTION

INVESTIGATION CONCERNING ILLINOIS BELL TELEPHONE COMPANY'S
COMPLIANCE WITH SECTION 271 OF THE TELECOMMUNICATIONS ACT

OF 1996

DOCKET NO. 01-0662 (PHASE 1)

March 25, 2002

1 **Q. Please state your name and business address.**

2 A. My name is Qin Liu. My business address is: 527 E Capitol, Springfield,
3 IL 62701.

4

5 **Q. By whom are you employed and in what capacity?**

6 A. I am employed by the Illinois Commerce Commission as a Policy Analyst
7 in the Policy Department of the Telecommunications Division.

8

9 **Q. Please describe your educational background and qualification.**

10 A. I hold a BA degree in Mathematics and Statistics, and a M.A. degree in
11 Economics. I have a Ph.D degree in Economics from Northwestern
12 University, and have completed coursework for the Ph.D program in
13 Urban and Regional Planning in the Department of Civil Engineering at
14 Northwestern University. My main fields of specialization are Industrial
15 Organization and Econometrics. I have been employed by the Illinois
16 Commerce Commission since September 1, 2000.

17

18 **Q. What is the purpose of your direct testimony in this proceeding?**

19

20 A. The purpose of my direct testimony is twofold. First I present my
21 assessment of Illinois Bell Telephone Company's (hereafter, Ameritech
22 Illinois, AI or "the Company") compliance with Section 271(c)(1)(A) ("Track

A”) requirements. Second, I present my assessment and recommendations pertaining to AI’s compliance with competitive checklist item 14 (resale) of Sec. 271 of the 1996 Telecommunications Act (Act). Specifically, I address Ameritech Illinois’ restrictions on the provisioning of DSL transport services.

Q. Please summarize your findings and recommendations.

A. With respect to Ameritech IL’s compliance with Track A requirements under Section 271, I conclude that Ameritech IL meets the requirements in Sec. 271(c)(1)(A) in that there are alternative carriers, which provide telecommunication services predominantly or exclusively over their own telephone exchange facilities in Illinois. However, Ameritech IL’s assessment of local competition is unreliable. Contrary to Ameritech IL’s assertion that competition is thriving in the local service market in Illinois, Ameritech IL still maintains firm control of the local market. Information or data used by Ameritech IL to support its assertion is either inflated or inconsistent.

With respect to the Company’s compliance with checklist item 14, I conclude that although Ameritech IL meets the requirements of checklist item 14 as it relates to its DSL operations, its current DSL practice and policy are inconsistent with the public interest in two ways. First, by not requiring Ameritech Illinois to offer DSL transport at retail to the end-user,

45 this Commission would effectively allow Ameritech Illinois to sidestep its
46 Section 251(c)(4) discounted resale obligations simply by designing its
47 marketing strategies. This not only deprives competitors of an avenue to
48 compete, but it also deprives customers or end-users the benefits of
49 competition in DSL service. Second, by effectively “bundling” or restricting
50 AADS/Ameritech’s DSL transport offerings to Ameritech IL’s wireline voice
51 customers, the Company erects a barrier to competition in the wireline
52 voice market. Ameritech DSL customers who would like to switch voice
53 carriers but not their DSL (i.e., DSL Internet) service, would be less willing
54 to switch their voice service providers. This clearly has an anti-
55 competitive impact on the wireline voice service market. Therefore, I
56 believe the Commission should require Ameritech IL to offer retail DSL to
57 the end-user on a standalone basis, and provide DSL transport regardless
58 of which carrier provides the voice service.

59
60 **“Track A” Compliance**

61
62 **Q. Please state the requirements of section 271(c)(1)(A) (Track A) of the**
63 **Act.**

64 **A.** One of the requirements for providing inter-LATA services is the “presence
65 of a facilities-based competitor”. Section 271(c)(1)(A) of the Act explicitly
66 states,

67 A Bell operating company meets the requirements of this
68 subparagraph if it has entered into one or more binding
69 agreements that have been approved under section 252
70 specifying the terms and conditions under which the Bell
71 operating company is providing access and interconnection
72 to its network facilities for the network facilities of one or
73 more unaffiliated competing providers of telephone
74 exchange services (as defined in section 3(47)(A), but
75 excluding exchange access) to residential and business
76 subscribers. For the purpose of this subparagraph, such
77 telephone exchange service may be offered by such
78 competing providers either exclusively over their own
79 telephone exchange service facilities or predominantly over
80 their own telephone exchange service facilities in
81 combination with the resale of the telecommunication
82 services of another carrier.¹
83

84 **Q. Does the mere presence of facilities-based service providers**
85 **necessarily mean that the local market is competitive?**

86 A. No. The ultimate goal of the Act is to open the local market to competition,
87 and to foster competition in the local market. The mere existence of
88 alternative carriers or presence of a facilities-based carrier is not
89 equivalent to the existence of competition or a competitive market. The
90 mere presence of an alternative facilities-based service provider today
91 does not guarantee the presence of alternative facilities-based service
92 providers in the future, *after* the Bell Operating Companies (BOCs) are
93 authorized to compete in the inter-LATA service market. Moreover, the
94 mere presence of an alternative facilities-based provider does not signify

¹ 47 U.S.C. § 271(c)(1)(A).

95 existence of competition or that the market is open to competition, and
96 neither does it guarantee that facilities-based competition will not shrink.

97 It is a universally-accepted tenet of economics that the degree of
98 competition is ultimately reflected in a carrier's ability to raise prices above
99 its costs. Specifically, in a robustly competitive market, prices should be
100 driven towards costs. The mere presence of alternative facilities-based
101 providers itself sheds no light on Ameritech IL's ability to retain a wide
102 profit margin. In fact, with alternative facilities-based providers in the
103 market, a BOC may still be able to retain its local monopoly power, and
104 render the alternative provider a price-taker, which means that the
105 influence of the alternative provider on market prices is at best marginal.

106 Moreover, to compete using UNE-P, UNE loops or resale of a
107 BOC's services, a facilities-based provider will have to heavily rely on the
108 BOCs' Operation Support System ("OSS"). The BOC's wholesale service
109 quality critically influences the facilities-based provider's ability to compete
110 effectively and, therefore, the opportunity for a truly competitive market to
111 emerge. Statistics show that Ameritech IL's wholesale services leaves
112 much room for improvement, as is clearly illustrated by the large fines that
113 Ameritech IL has paid for providing poor wholesale service quality.²
114 Therefore, the mere presence of alternative service providers is not
115 equivalent to the existence of a competitive market.

² Ameritech has paid a total of \$30 million since July 2000.

116

117 **Q. Has Ms. Heritage presented a comprehensive and reliable analysis of**
118 **the status of competition in local service markets in Illinois?**

119 A. No. Ms. Heritage's analysis is incomplete. While asserting that
120 competition is thriving, Ms. Heritage did not provide any criteria for her
121 assessment of competition nor did she present any evidence to support
122 her assertion that it currently thrives.³ Ms. Heritage merely presented
123 figures on access lines serviced by CLECs using different measurements
124 (E911, Interconnection Trunk, etc). Moreover, Ms. Heritage did not
125 conduct any analysis of the entire local market, nor did she address
126 whether or how much Ameritech IL's ability to retain its market power,
127 which is the ultimate measure of whether Ameritech IL has opened its
128 market for competition, has declined. For example, Ms. Heritage did not
129 present any evidence that Ameritech IL's overall retail rates for local
130 services have declined significantly as a result of the presence of
131 alternative carriers or competition. Thus, Ms. Heritage failed to provide an
132 adequate analysis of competition in the local market.

133

134 **Q. Ms. Heritage cited the fact that "more than XXX CLECs were certified**
135 **to provide local service" and that XXX CLECs have entered into**
136 **approved wireline interconnection and resale agreements" with**

³ See, e.g., Heritage Affidavit, ¶4.

Ameritech IL as evidence to support Ameritech IL's claim that local competition continues to thrive. Heritage Affidavit, ¶4. Please comment.

A. For a CLEC to operate in the local market, it will have to first obtain certification to provide service and enter into interconnection agreements. Thus, the fact that more than XXX CLECs have been certified and that XXX interconnection and resale agreements have been entered is an important step towards opening the market to competition. However, it does not signify that competition is thriving in Illinois, as asserted by Ms. Heritage, for two reasons.

First, the number of interconnection agreements is not necessarily indicative of the degree of competition. For example, the General Interconnection Agreement (GIA) is a generic offering applicable to the 13 SBC states. A carrier wanting to provide services in Texas could sign on to a GIA that would include Illinois although it has no specific plan to operate in Illinois, and may never do so. Under Ms. Heritage's approach, this interconnection agreement would be counted towards proof of competition in Illinois. Clearly, this would be inappropriate.

Second, carrier investment in facilities occurs after interconnection agreements are reached, and typically after certification to provide service is obtained from the appropriate regulatory authority. Therefore, the number of interconnection agreements and certifications does not indicate

159 how much investment is in place, nor does it indicate how many CLECS
160 are, or can be, effectively competing in the local market. As shown below,
161 despite numerous interconnection agreements and certifications in
162 existence, Ameritech Illinois still maintains firm control of the local market,
163 rendering alternative carriers price-takers, who cannot influence the
164 market price by restricting their output.
165

166 **Q. Ms. Heritage cited XXX annual growth for UNE loops as support for**
167 **Ameritech IL's assertion that local competition is growing rapidly.**
168 **Heritage Affidavit, ¶7. Please comment.**

169 A. Ms. Heritage calculates the XXX annual growth rate by using the total
170 numbers of UNE loops as of September 2000 (XXX) and September 2001
171 (XXX) respectively. There are two flaws in using the XXX rate to
172 characterize local competition. First, from information provided in
173 Attachment F of Ms. Heritage's Affidavit, at least 12% of the UNE loops
174 were purchased for purposes other than provisioning local telephone
175 services. Of the twenty-four (24) carriers that purchased UNE loops,
176 seven (7), which account for 8.4% of total UNE loops, do not have any
177 E911 listing, UNE-P, or resale. That is, these seven (7) carriers do not
178 provide local voice services at all. Of the remaining seventeen (17)
179 carriers that purchased UNE loops, five (5) have UNE-loops that exceed
180 the number of their E911 listings. This data suggests that part of these

CLECs' UNE loop purchases were not used for provisioning local telephone services. Consequently, it is unclear how much of Ms. Heritage's growth rate calculation of XXX is actually due to growth in the local market. Ms. Heritage's UNE loop annual growth figures cannot be relied upon as a measure of local competition nor, as Ms. Heritage asserts, do these figures compel the conclusion that local competition is growing rapidly.

Second, Ms. Heritage used annual aggregate UNE loop figures, instead of monthly or quarterly UNE loop data, to calculate the UNE loop growth rate. Annual UNE loops figures, however, may not reflect *recent* trends in growth. Although annual data appear to show rapid growth, monthly or quarterly data may reveal a different picture, as is the case with UNE-P. For example, while the UNE-P data for the nine-month period ending September 2001 shows a growth rate of 288.1%, the underlying monthly data for the same period shows a strong *declining* trend in growth rates. Specifically, the December 2000 growth rate starts at 491.2% and drastically declines to 2.1% by September 2001.⁴ Similarly, while UNE-loops show a promising XXX annual growth, the quarterly growth rates have been steadily declining since the second quarterly in 2001 from 13.4% in the first to 3.24% in the third quarters, respectively.⁵

⁴ See attached Schedule 10.01 and Staff Data Request 1.05.

202 **Q. Ms. Heritage states, “The selected competitors profiled in this**
203 **attachment meet the criteria for “Track A” competition by providing**
204 **service to both residential and business customers either**
205 **exclusively or predominantly over their own facilities.” Heritage**
206 **Affidavit, Attachment C, ¶2. Please comment.**

207 A. Ms. Heritage’s statement is inconsistent with her approach to analyzing
208 carrier services. On one hand, Ms. Heritage implicitly acknowledges that
209 both residential and business services are included in “Track A”
210 requirements.⁶ On the other hand, when identifying qualified carriers to
211 provide services to “both residential and business customers either
212 exclusively or predominantly over their own facilities,” and analyzing how
213 these carriers provide services, Ms. Heritage excludes resale business
214 services from her analysis, which portrays carriers as more heavily relying
215 on own facilities than they actually do.⁷ In Attachment C of her Affidavit,
216 Ms. Heritage presented data E911 listing lines, UNE-P (business and
217 residential) and resale residential lines, leaving out resale business lines.
218 Ms. Heritage then lists McLeodUSA Telecommunications Services, Inc.
219 (McLeod) as one of the “Track A” carriers. However, residential and
220 business resale services comprise 48% of the total services provided by
221 McLeod.⁸ Therefore, Ms. Heritage is inappropriately classifying a carrier

⁵ Staff Data Request 5.01.

⁶ Heritage Affidavit, Attachment C, ¶2.

⁷ Heritage Affidavit, Attachment C, Table A,

⁸ Resale percentage drops to 0.06% if resale business is excluded.

that provides 48% of its local services through resale as a “Track A” carrier, since a Track A Carrier is defined by the Act as one that provides telephone exchange service over its own facilities or predominantly over its own facilities in combination with the resale of services of another carrier.⁹ Ms. Heritage should explain and provide support in her rebuttal testimony why resale business lines should be excluded in determining whether a carrier is providing service *predominantly* over its own exchange facilities, as well as the basis she used to determine what constitutes “predominantly”.

Q. Ms. Heritage presented a time series for interconnection trunks for the period from September 2000 to September 2001. Ms. Heritage cited this as evidence that there is significant competition in Illinois. Heritage Affidavit, ¶ 25. Do you agree?

A. No. Ms. Heritage simply presented CLEC data, not data on the entire market, which would include Ameritech Illinois’ data. This limited data does not indicate whether Illinois customers really have a choice in local service providers or whether there is significant competition for the following reasons. Ms. Heritage failed to mention that Ameritech Illinois has at least twice as many interconnection trunks as all the twenty-nine (29) CLECs combined, despite the fast growth that Ms. Heritage tries to

⁹ 47 USC § 271(c)(1)(A).

243 portray.¹⁰ The largest CLEC in terms of Interconnection Trunks, AT&T,
244 has XXX interconnection trunks, which is 7% of the total interconnection
245 trunks owned by Ameritech Illinois and CLECs combined. Thus, the data
246 on interconnection trunks presented by Ms. Heritage actually rebuts Ms.
247 Heritage's assertion of a competitive market.

248
249 **Q. Please describe E911-based estimates of access line counts.**

250 A. A facilities-based carrier can provide local services over (1)
251 switching/transport/loop facilities it owns, (2) switching/transport facilities it
252 owns plus a leased UNE loop, or (3) leased switching/transport/loop
253 facilities (i.e., UNE-P).

254 Carriers that operate using their own *switching facilities* (i.e.,
255 categories (1) and (2) above) have phone numbers with 911 capability
256 (i.e., ability to dial 911) that they serve listed in the E911 database. The
257 phone numbers served through UNE-P (or resale) are not listed in the
258 E911 database under the serving carriers' names. Therefore, the phone
259 numbers served by facilities-based carriers are the sum of E911 based
260 phone numbers plus UNE-P phone numbers. The phone numbers served
261 by all carriers are the sum of E911-based phone number plus UNE-P
262 phone numbers plus resale phone numbers.

¹⁰ According to Ameritech response to Staff Data Request 1.04 JZ, Ameritech has (as of September 2001) 1,020,259 Interconnection Trunks.

Ameritech IL's E911-based estimation of CLECs access lines uses the phone numbers listed in the E911 database as a proxy for CLECs' access lines that are serviced over CLEC-owned switches. The E911-based estimates of CLECs access lines comprise E911 phone number based estimates of CLECs-switch access lines plus UNE-P lines plus resale lines. It is important to note that phone numbers may not be equivalent to access lines. Users of PBX and Centrex services are typically assigned more phone numbers than there are actual access lines. A Centrex customer may have one access line but multiple telephone numbers listed in the E911 database, and so could a PBX customer. Therefore, estimation of access lines using E911-based phone numbers would likely inflate or overstate the actual number of access lines. As shown later in my testimony, this estimation procedure would likely overestimate the number of CLECs' access lines that are serviced over CLEC-owned switches.

Q. In Tables 1 and 2 of her Affidavit, Ms. Heritage presents the aggregate facilities-based CLEC lines of XXX (E911-based) and the aggregate CLEC access lines of XXX (E911-based) as evidence that competition is thriving. Please comment.

A. These data do not indicate in any way that the local market is competitive for two reasons. First, using the access line figures presented by Ms.

Heritage, Ameritech Illinois still maintains firm control of the local market and the CLECs serve only a small percentage of customers in Ameritech Illinois' territory. Thirty facilities-based carriers combined account for XXX facilities-based CLEC lines (E911 + UNE-P) in Illinois. Eighty carriers (facilities-based and resellers) combined serve XXX CLEC E911-based access lines. Of these eighty carriers, the three largest CLECs are AT&T (XXX), WorldCom (XXX) and McLeod (XXX), which constitute a total of 63.3% of the total CLEC market. The remaining seventy-seven (77) carriers comprise the remaining 36.7% of the total CLEC market. Even with the inflated estimates of CLEC access lines (as explained below), the three largest CLECs, AT&T, WorldCom and McLeod, command 6.0%, 3.75%, and 2.2% of the local services market, respectively. The remaining seventy-seven (77) carriers cover only 6.9% of the local market. In contrast, Ameritech IL alone commands 81% of the local service market. Therefore, contrary to Ms. Heritage's claim that the presence of these CLECs is evidence that the local market is open to competition, these figures show that Illinois local market is still highly concentrated, and that Ameritech Illinois firmly holds on to its monopoly-based market power.

Second, Ms. Heritage's comparison of access lines serviced by CLECs and Ameritech Illinois is invalid because she uses different measurements or standards for CLECs and Ameritech IL. Specifically, she uses actual *access lines* for Ameritech IL and phone number (i.e.,

E911) based estimates for CLECs access lines that are serviced over CLEC-owned switches.¹¹ As noted above, access lines are not necessarily equal to phone numbers, and E911 phone listing-based estimation of access lines is very likely to produce inflated estimates. This upward bias in E911-based estimation can be illustrated or verified by comparing the number of access lines actually serviced by Ameritech Illinois and the number of access lines estimated using E911-database. Ameritech Illinois has a total of XXX million E911-based access lines. Excluding approximately XXX resold and UNE-P lines, Ameritech Illinois has XXX million E911-based access lines.¹² However, Ameritech Illinois' actual switched access lines (as of November 2001) equaled XXX million.¹³ The E911-based estimation of Ameritech Illinois access lines, thus, represents an 18.2% overestimation. This strongly suggests that the E911-based estimates of CLECs overstate CLECs' actual access lines as well. As noted earlier, users of PBX and Centrex services typically are assigned more numbers than there are actual access lines. Consequently, the E911-based estimates of CLEC access lines are very likely inflated by more than 18.2%, as CLECs as a group have a higher percentage of business customers, who are more likely to subscribe to PBX or Centrex services.

¹¹ Heritage Affidavit, ¶¶ 4-5, Attachments C, D.

328 **Q. In Tables 1 and 2 of her Affidavit, Ms. Heritage presents**
329 **Interconnection trunk-based estimation of CLEC access lines with**
330 **facilities-based being XXX and total XXX. Please comment.**

331 A. Ms. Heritage's interconnection trunk-based estimates of CLEC access
332 lines are even higher than her E911-based estimates. As discussed
333 above, Ms. Heritage's E911-based estimation of CLEC access lines is
334 likely to produce inflated estimates of access lines. Therefore, I conclude
335 that Ms. Heritage's interconnection trunk-based estimation produces an
336 even greater upward bias.

337

338 **Q. In Table 3 and Attachment F of her Affidavit, Ms. Heritage presented**
339 **information on facilities-based carriers. Please comment.**

340 A. The data and information presented by Ms. Heritage are inconsistent.
341 According to Table 3, Forte Communications ("Forte") and Madison River
342 Communications ("Madison River") are Type I facilities-based carriers (i.e.,
343 use own facilities) and they do not provide services using UNE-P or UNE
344 loop. However, Ms. Heritage listed Forte and Madison River as a UNE-P
345 carrier and a UNE loops carrier in Attachment F, respectively.¹⁴ Ms.
346 Heritage should explain the inconsistency between Table 3 and
347 Attachment F.

¹² See Ameritech response to Staff Data Request 1.06 JZ.

¹³ See Ameritech response to Staff Data Request 1.04 (d).

¹⁴ Heritage Affidavit, Attachment F, UNE-P UNE Loop tables.

MTCO Communications (“MTCO”) is a UNE loops carrier in Attachment F but not listed as a UNE-Loop (i.e., Type II facilities-based) carrier in Table 3. KMC Telecom (“KMC”), in contrast, appears in Table 3 as a facilities-based carrier (Type I), but does not appear in Attachment F as a facilities-based carrier. Ms. Heritage should explain why she excluded some facilities-based carriers in Attachment F from Table 3 and included others that are similarly situated.

Q. On ¶ 10 of her affidavit, Ms. Heritage also suggests that there are XXX facilities-based carriers providing local voice service to Illinois customers. Please comment.

A. Ms. Heritage did not explain how she obtained the number of facilities-based carriers that provide local voice services. Attachment F of her affidavit indicates that XXX carriers have E911 lines, XXX of which also provide services using UNE-P, and XXX carriers provide services using UNE-P but do not appear in the E911 database. Removing these XXX carriers that are counted twice results in XXX facilities-based carriers that provide local services. Therefore, in making her statement that there are XXX facilities-based carriers providing local services in Illinois, it seems clear Ms. Heritage double-counted carriers.

369 **Q. In Attachment F of her Affidavit, Ms. Heritage indicates there are XXX**
370 **carriers with collocation arrangements with Ameritech Illinois.**
371 **Please comment.**

372 A. A careful reading of Attachment F reveals that ten (10) of the XXX carriers
373 with collocation arrangements with Ameritech Illinois do not have any
374 E911 listing, UNE loop or UNE-P.¹⁵ Of these ten carriers only Adams
375 Telsystems is a reseller. Thus, among the ten (10) carriers, nine (9) are
376 not providing local voice services at all in Illinois, and the remaining one
377 (1) provides local services only through resale. Ms. Heritage does not
378 explain why she includes these ten (10) carriers' collocation arrangements
379 in her analysis of facilities-based local competition, as these carriers do
380 not provide local services over their own facilities.

381

382 **Q. Ms. Heritage states, "the CLEC switches currently installed in Illinois,**
383 **if upgraded to maximum capacity, would have sufficient capacity to**
384 **serve 82% of the access lines that Ameritech IL serves in the entire**
385 **state of Illinois." Heritage Affidavit, ¶ 27. Please comment.**

386 A. Ameritech IL serves approximately XXX million customers in Illinois as of
387 November 2001.¹⁶ By Ms. Heritage's assertion, CLECs switches, if
388 updated to the maximum capacity, would be able to serve XXX (XXX)x

¹⁵ The ten carriers are: Adams Telsystems ("Adams"), Blue Star Networks, ICG Communications, Lantronix, Looking Glass Networks, Maxcess, MRC Communications, Novacon, Time Warner Communications, Williams Local Network. Among the ten, only Adams provides resale voice.

¹⁶ Ameritech response to Staff Data Request 1.04 JZ (d).

389 82%) million customers in Illinois. Ms. Heritage's use of technical limit or
390 'fully expanded' capacity as an indicator of CLECs' competitiveness is
391 improper.

392 First, as indicated in Ameritech IL's response to Staff Data Request
393 1.07 JZ (a), Ms. Heritage's "82%" capacity is a fictional capacity, since it
394 does not represent currently installed capacity or capacity that will be
395 installed by CLECs. This fictional percentage (82%) does not in any way
396 indicate whether CLECs are, or can be, effectively competing with
397 Ameritech Illinois.

398 Second, if "fully expanded" capacity or technical limit is a
399 measurement of competitiveness, it would be more proper to compare
400 CLECs' "fully expanded" switching capacity with Ameritech Illinois' "fully
401 expanded" switching capacity. In other words, it is the relative capacity,
402 not the absolute capacity alone that would, under such assumption,
403 measure the competitiveness of CLECs. Ameritech Illinois has refused to
404 provide an estimate of the "fully expanded" capacity for its 395 switches.¹⁷

405 If, for example, "fully expanded" Ameritech IL switches are capable of
406 serving 5000% of its current customers (i.e., 330 million), CLECs' "fully
407 expanded" switching capacity would only be 1.6% of Ameritech Illinois'
408 fully expanded switching capacity. Thus, CLECs' technical limit or fully
409 expanded capacity alone is not indicative of a competitive market.

¹⁷ See Ameritech response to Staff Data Request 1.07 JZ (g).

Third, if technical limits are used as an indicator of CLECs' capability to compete, as suggested by Ms. Heritage, then one would have to conclude that the local market is always open to competition because it is always technically feasible to build an entire network, just as it is to "fully expand" switch capacity.

Q. Ms. Heritage states, "Through their collocated equipment, facilities-based CLECs are in position to serve 94% of the residential access lines and 96% of the business access lines currently served by Ameritech Illinois." Heritage Affidavit , ¶ 32. Please comment.

A. In Table 5 of her affidavit, Ms. Heritage presents the total business and residential access lines serviced by Ameritech Illinois in all the XXX wire centers and the XXX wire centers with collocations. The XXX wire centers (with collocation) serve 96% of Ameritech IL's business and 94% of residential customers. It appears that Ms. Heritage's statement incorrectly assumes that CLEC's collocation equipment in each of the 163 wire centers would have sufficient capacity to serve all the access lines currently serviced by Ameritech IL in that wire center. Ms. Heritage presents no evidence to support such assumption. In addition, while acknowledging that not all carriers with collocation arrangements with Ameritech IL compete in the local services market, Ms. Heritage did not state how many of the collocation arrangements are for provisioning local

voice services.¹⁸ From information presented by Ms. Heritage, it is unclear as to how many access lines CLECs-installed collocation equipment can handle. Therefore, Ms. Heritage's assertion that CLECs are in position to serve 94% and 96% of Ameritech IL's residential and business respectively does not have support.

Q. Ms. Heritage provides information on Ameritech Illinois resale lines (business and residential) and concludes that the Company is in compliance with "Track A" through the existence of resold residential lines." Heritage Affidavit, ¶¶34. Please comment.

A. While resold residential lines do exist in Illinois at present, they are declining at rapid rates. Resold residential access lines declined by 19.5% from September 2000 to September 2001, and declined by 20.52% and 13.10% in the second and third quarters, respectively, in 2001.¹⁹ At this rate of decline, resold residential access lines will soon vanish.

Q. Please summarize your findings regarding Ms. Heritage's analysis of local competition.

A. Ms. Heritage's assessment of local competition is unreliable. First, it is incomplete. It focuses on the total numbers of CLECs access lines, not the entire market. Second, Ms. Heritage's E911-based estimation of

¹⁸ Heritage Affidavit, ¶¶ 29-33.

CLEC access lines is very likely to be approximately 18.2% (or more) inflated. Her interconnection trunk-based estimation is even more inflated. Third, Ms. Heritage's presentation of the number of competitive carriers is inaccurate because she double counts certain carriers. Fourth, Ms. Heritage's data is internally inconsistent and is, therefore, flawed. Overall Ms. Heritage's assessment of local competition is unreliable.

Q. Has Ameritech IL met the requirements of Sec. 271(c)(1)(A)?

A. Ameritech IL has met the requirements of Sec. 271(c)(1)(A) in that there is a presence of alternative providers that provide local services exclusively or predominantly over their own facilities. However, there is no true competition to date in the local service market in Illinois. CLECs have made some progress in the local market as is shown by their current share of the local service market, albeit miniscule in comparison to Ameritech Illinois. However, CLECs have not been able to effectively compete with Ameritech Illinois, which is still able to maintain firm control of its power in the local service market.

Resale DSL and Competitive Status in the DSL Market

Retail DSL

¹⁹ Heritage Affidavit, Attachment D; Company response to Staff Data Request 5.01.

475 **Q. Please describe Ameritech Illinois' resale obligations under the Act.**

476 A. Section 251(c)(4) of the Act states

477 The duty (A) to offer for resale at wholesale rates any
478 telecommunications service that the carrier provides at retail
479 to subscribers who are not telecommunications carriers; and
480 (B) not to prohibit, and not to impose unreasonable or
481 discriminatory conditions or limitations on, the resale of such
482 telecommunications service, except that a State commission
483 may, consistent with regulations prescribed by the
484 Commission under this section, prohibit a reseller that
485 obtains at wholesale rates a telecommunications service that
486 is available at retail only to a category of subscribers from
487 offering such service to a different category of subscribers.
488

489 In addition, Section 252(d)(3) of the Act states the following with
490 regard to wholesale prices for telecommunications services

491 For the purposes of section 251(c)(4), a State Commission
492 shall determine wholesale rates on the basis of retail rates
493 charged to subscribers for the telecommunications service
494 requested, excluding the portion thereof attributable to any
495 marketing, billing, collection, and other costs that will be
496 avoided by the local exchange carrier.
497
498

499 **Q. Can an ILEC set up an affiliate to escape the obligations under**
500 **Section 251(c) of the Act?**

501 A. No, it cannot. In January 2001, the United States Court of Appeals for the
502 District of Columbia Circuit held in its *ASCENT* order that data affiliate of
503 incumbent local exchange carriers ("ILECs") are subject to all obligations
504 of section 251(c) of the Act:

505 As the Commission concedes, Congress did not treat
506 advanced services differently from other telecommunication

services. See Deployment Order p11. It did not limit the regulation of telecommunications services to those services that rely on the local loop. For that reason, the Commission may not permit an ILEC to avoid s 251 (c) obligations as applied to advanced services by setting up a wholly owned affiliate to offer those services. Association of Communications Enterprises v. FCC, 235 F.3rd 662, (D.C., Cir. 2001) (*ASCENT*), party II.

Q. Is Ameritech Advanced Data Services (“AADS”), a data affiliate of Ameritech Illinois, subject to Section 251(c)(4) resale requirements?

A. Yes, it is. Under the *ASCENT* decision, any advanced data services sold at retail by AADS to retail customers (residential and business) are subject to Section 251(c)(4) discounted resale obligations. That is, if AADS sells DSL services at retail to residential or business customers, it must offer DSL for resale at a wholesale discount to telecommunications carriers for resale.

Q. Mr. Habeeb describes AADS as a non-dominant carrier. Habeeb Affidavit, n. 3. Please comment.

A. Mr. Habeeb’s description directly conflicts with the FCC’s statement on this matter:

As discussed above, incumbent LECs currently are classified as dominant in the provision of broadband services.”²⁰

²⁰ The FCC, Notice of Proposed Rulemaking, In the Matter of Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, CC Docket No. 01-337, FCC 01-360 (December 20, 2001), para. 41.

534
535 As DSL transport or DSL Internet Access is a subset of broadband
536 services, Ameritech Illinois is clearly a dominant provider under the
537 FCC's current classification. Moreover, Mr. Habeeb does not offer in his
538 affidavit any specific evidence or criteria to support his assertion.

539

540 **Q. On page 7 of his affidavit, Mr. Habeeb states, "DSL Transport is a**
541 **highly competitive wholesale input." Please comment?**

542 A. Mr. Habeeb does not provide any specific criteria for his conclusion. Nor
543 does Mr. Habeeb offer any specific evidence to support his assertion.

544 Various modes of broadband access exist. Cable and DSL
545 constitute the lion's share of this market, while fixed wireless, fiber-to-the-
546 home and satellite account for a small share of the broadband access
547 market.²¹

548 Nationwide data shows that BOCs provide 83%, and with ILECs
549 altogether provide 92.8%, of the total DSL access lines as of December
550 31, 2000.²² This shows that the Bell Operating Companies (such as
551 Ameritech Illinois) retain firm control of the DSL market.

552

553 **Q. Please describe Ameritech Illinois' DSL service offering.**

²¹ Based on 2001 DSL Forum, the worldwide combined broadband share for Fixed Wireless, Fiber-to-the-Home, and Satellite is 2.57% and 3.9% for 2000 and 2001 respectively.

²² Table 4, Federal Communications Commission Releases Data on High-speed Services for Internet Access, August 9, 2001.

554 A. Ameritech Illinois offers DSL services through its affiliate, Ameritech
555 Advanced Data Service (“AADS”), which offers DSL services to its
556 affiliated Internet service provider (ISP), Ameritech Interactive Media
557 Services, Inc. (AIMS), and unaffiliated ISPs (under either Interconnection
558 Agreements or AADS’ FCC Tariff No.1). Currently AADS has XXX
559 interconnection agreements with ISPs, including Ameritech IL’s affiliate,
560 AIMS, but has no DSL wholesale customers under the AADS’ FCC Tariff
561 No.1.²³ AIMS is AADS’ major customer, which comprises approximately
562 XXX% of AADS’ DSL transport lines and receives more than XXX% of
563 AIMS’ DSL transport lines from AADS.²⁴ Though offering other services
564 (e.g., retail DSL to business customers, ATM, etc) as well, AADS’
565 business focus is to provision DSL services to Ameritech Illinois’ Internet
566 service provider, AIMS, and other unaffiliated ISPs.²⁵

567 ISPs (AIMS and unaffiliated ISPs) “combine” DSL services from
568 AADS with their own Internet-Access services or Internet related
569 functionalities (e.g., servers, routers, web sites, etc.) to provision DSL
570 Internet Access to end-users. ISPs or their agents market DSL service to
571 end-users as part of the DSL Internet Access package but not on a stand-
572 alone basis.

²³ Company response to Staff Data Request 3.07(a).

²⁴ Company response to Staff Data Requests 3.07(f) and 5.07(d).

²⁵ Habeeb Affidavit, ¶14.

It is important to note that Ameritech/SBC, the parent company of AADS and AIMS, serves as an agent for AIMS.²⁶ Thus, while AADS does not offer DSL services to the end-users directly, its parent, Ameritech/SBC, does so in its capacity as AIMS' agent. In fact, by taking advantage of its brand name (Ameritech/SBC), Ameritech Illinois has been playing a major role in marketing DSL to the end users directly as part of its DSL Internet Access package. This is clearly illustrated by the series of aggressive commercial TV and radio campaigns for DSL Internet services that Ameritech IL has launched.²⁷

Q. Have any ILECs provided DSL services at retail to end-users on a stand-alone basis?

A. Yes. Some ILECs have filed tariffs with the FCC to offer DSL services at retail to end-users as well as wholesale DSL services to ISPs. Verizon, for example, markets its DSL services in two distinct ways: directly to end-users on a stand-alone basis, and to ISPs who then market it as part of "DSL Internet Access package."²⁸

²⁶ Habeeb Affidavit, ¶17.

²⁷ Company response to Staff Data Request 3.11.

²⁸ See, FCC, Second Report and Order, In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, FCC 99-330 at ¶ 6 & 7 (November 1999). See also, FCC, Memorandum Opinion and Order, In the Matter of Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Slect Services Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut, CC Docket No. 01-100, FCC 01-208 at para 27-44(July 20, 2001); FCC, Memorandum Opinion and Order, In the Matter of Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks

590

591 **Q. Does AADS currently offer any DSL services at retail?**

592 A. AADS offers DSL transport on a retail basis to business customers for
593 Remote Local Area Network (RLAN) application. It currently has no RLAN
594 customer in Illinois.²⁹ AADS does not offer DSL transport at retail to
595 Internet subscribers (on a standalone basis).

596

597 **Q. Should the Commission require that AADS' DSL services be offered**
598 **to end-users (i.e., Internet subscribers) as a stand-alone product**
599 **offering?**

600 A. Yes, if the Commission's goal is to promote competition within the DSL
601 transport market. The justifications for this recommendation are offered
602 below. To the degree DSL transport is offered to business customers for
603 RLAN applications, the offering should be available to CLECs for resale
604 purposes for such application.³⁰

605

606 **Q. Do ISPs have to perform any physical work to provision DSL**
607 **transport?**

608 A. Not to my knowledge. So far Ameritech IL has provided no evidence to
609 this effect. Staff did request such information in Staff Data Request

Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Pennsylvania, CC Docket No. 01-138, FCC 01-269 at para 93-98(September 19, 2001)

²⁹ Company response to Staff Data Request 3.07(b) and (i).

³⁰ CFR 51.605

5.06(a). Ameritech IL instead provided information on how Internet access services are offered but provided no information on the physical combination of DSL with Internet Access.³¹ Thus, Ameritech IL has provided no evidence to prove that significant physical work is involved in combining DSL transport with Internet access for the provision of DSL Internet.

Q. Is offering DSL transport as part of the DSL Internet Access package merely a marketing strategy for Ameritech IL?

A. Yes. Ameritech IL's DSL Internet Access package is an enhanced version of its Dial-up Internet access that includes Ameritech IL's "dial-up internet Access" feature. That is, a customer purchasing DSL Internet Access services from AIMS will automatically receive AIMS' "dial-up" Internet Access feature with no extra cost.³² As mentioned above, AIMS (as well as other ISPs) performs little physical work to combine DSL transport with Internet Access for the provision of DSL Internet service. AIMS serves as a resale agent for AADS or Ameritech Illinois for its DSL transport and does so by selling DSL transport as a part of the DSL Internet Access package. Since there is little processing involved to combine the two main intermediate inputs (i.e., DSL transport and Internet Access) to produce "DSL Internet Service" product, there is no technical

³¹ Company response to Staff Data Request 5.06(a).

reason why Ameritech IL or AADS cannot offer DSL transport to the end-user on a stand-alone basis or why the end-users cannot purchase the enhancement (i.e., DSL transport) on a stand-alone basis.³³ Moreover, Verizon's DSL product offering (on a stand-alone basis) to the end-users confirms this conclusion. Therefore, Ameritech Illinois' decision not to offer DSL transport to end-users directly can only be interpreted as purely a marketing strategy that circumvents, intentionally or otherwise, Section 251 (c) (4) discounted resale requirements.

Q. Would consumers benefit from generally available retail DSL offerings?

A. Yes. A retail DSL option will benefit consumers in several ways. First, unlike the current exclusive DSL Internet offering, a retail DSL option would allow the end-user to choose not only which Internet services provider to subscribe to, but also which DSL transport provider to elect for the delivery of the Internet services. This provides consumers with more choices.

Second, retail DSL (on a stand-alone basis) undoubtedly would also provide end-users lower prices for DSL than under the current, exclusive DSL Internet marketing arrangement. As Ameritech Illinois' DSL

³² AIMS customer service representative.

³³ For example, a DVD player is used in conjunction with a T.V. set (i.e., they are complementary). However, this does not necessarily follow that a DVD cannot be sold as a stand-alone product or that a DVD has to be offered as part of a DVD-TV package.

Internet package is an enhanced version of its Internet service that includes Ameritech Illinois' dial-up Internet, the implicit retail DSL price that a customer pays AIMS in the "DSL Internet" price can be determined by subtracting the (dial-up) Internet Access price from the "DSL Internet" price.³⁴ The DSL "retail" rates hidden in AIMS' commercial rates for DSL Internet are set in the marketplace and are above the wholesale DSL price charged by AADS, reflecting profit margins.³⁵ Wholesale DSL rates are not TELRIC or cost based and they are set by Ameritech Illinois' AADS to maximize its profits. That is, they are commercial rates and reflect profit margins.³⁶ Thus, Ameritech Illinois' current, exclusive packaged arrangement creates "double margin" problems. As a result, the DSL prices faced by the customers or end-users under exclusive DSL Internet package arrangement would be higher than when customers are allowed to purchase retail DSL from Ameritech IL on a stand-alone basis.

Third, requiring Ameritech Illinois to provide DSL transport at retail to end-users (on a stand-alone basis) would provide additional benefits to customers through enhanced competition within the DSL transport market.

With DSL transport subject to Section 251 (c)(4) discounted resale

³⁴ There are ISPs that offer DSL Internet Access that does not include the "dial-up" feature at no extra cost. In such situation, this calculation would give the implicit "DSL price – Dial-up" price. Then the illustration remains true. That is, retail DSL could eliminate "double profit margin" problem and thus allows customers lower DSL costs.

³⁵ AIMS or independent ISPs' maximizing problems are approximately to maximize the sum of profits from Internet service and profits from DSL transport (and profits from other types of transports). That is, AIMS and independent ISPs, selling DSL Internet, face the same profit maximizing problem as if they were making two different product offerings: DSL and Internet Access.

669 obligations, competition in the DSL transport market would greatly benefit
670 consumers.

671

672 **Q. In addition to the consumer benefits outlined above, are there other**
673 **reasons why AADS/Ameritech should be required to offer DSL**
674 **transport at retail to end-users?**

675 A. Yes. DSL and voice service face competition from the same services but
676 from different modes: wireless voice for wire line voice, cable modem for
677 DSL, for example. The outside sources of competition (i.e., from different
678 modes), however, do not diminish the importance or need of competition
679 within the wireline voice and DSL markets, respectively. Neither should
680 they weaken the FCC and this Commission's determination to open up
681 both markets to competition. The FCC and this Commission's intent and
682 determination are clearly reflected in Federal and State rules and
683 regulations governing both voice and DSL markets, respectively. See the
684 FCC First Report and Order (FCC 96-325), and Line Sharing Order (FCC
685 99-355), Line Sharing Reconsideration (FCC 01-26)

686 The most noticeable difference in the means of competition
687 between DSL and wireline markets is that, while CLECs are able to
688 compete with Ameritech Illinois through resale of Ameritech Illinois' voice
689 services, they are not able to compete in the DSL market through reselling

³⁶ Profit margin refers to the revenue over the costs per unit of sale.

Ameritech Illinois' DSL offering. This is simply because Ameritech Illinois adopts a marketing strategy that helps it circumvent or sidestep the Section 251 (c)(4) discounted resale obligation.

Competition through resale DSL is especially important at this stage when Ameritech Illinois has clear problems with its wholesale performance, which is reflected by the amount of fines (\$30 million) that Ameritech IL had paid for providing poor wholesale service quality in the last 18 months. This is because resale DSL services (like resale voice) involves less OSS and is less exposed to, or affected by, Ameritech Illinois' poor wholesale performance.

In summary, by failing to offer DSL at retail to the end-user, Ameritech Illinois is able to sidestep its Section 251(c)(4) discounted resale obligations simply through manipulating its marketing strategies. By doing so, it not only deprives the competitor one important means to compete but it also deprives the customers or end-users the benefits mentioned earlier.

Q. What recommendations do you have with regard to Ameritech Illinois' exclusive wholesale DSL transport to ISPs?

A. As noted above, retail DSL can benefit customers in more than one way and Ameritech IL's exclusive DSL Internet offering is merely a marketing strategy, which enables it to circumvent Section 251(c)(4) resale

requirement. Since DSL transport availability to retail customers on a stand-alone basis is in the public interest, Staff accordingly recommends that the Commission require Ameritech IL, through its affiliate AADS, to provide retail DSL services to end-users.

Bundling Requirement

Q. Does AADS provide DSL transport on all loops on its network?

A. No. AADS/Ameritech restricts its DSL transport offering to loops over which Ameritech IL provides the voice service. It does not provide DSL transport to a customer or over the customer line if the customer elects a carrier other than Ameritech Illinois for voice services.³⁷ That is, Ameritech Illinois effectively bundles its wholesale DSL services with its retail voice service offering.

Q. Could this bundling practice impede competition in the wireline voice services market?

A. Yes. Under Ameritech Illinois' bundling practice, Ameritech does not provide DSL transport to a customer if the customer elects a wireline voice provider other than Ameritech. As a result, a customer currently subscribing to Ameritech Illinois' voice and DSL Internet services would be

³⁷ Company response to Staff Data Request 5.04.

less willing to switch to a different voice provider if the customer has a strong preference for Ameritech Illinois's (i.e., AIMS) DSL Internet service, (even if the customer would have made the switch if Ameritech Illinois did not tie its DSL with voice services). This bundling practice ties a customer's choice for voice service provider to its choice for DSL Internet service provider. Ameritech Illinois' role in the DSL market makes it harder for CLECs to enter into competition with Ameritech Illinois in the local voice market.³⁸

Q. What recommendations do you have with regard to Ameritech Illinois' bundling practice, or refusal to provision DSL when another carrier provides the voice services?

A. As noted above, the self-imposed bundling practice and policy erects a barrier in the local service market and reduces a customer's willingness to switch from Ameritech IL to an alternative carrier as the voice provider. Thus, it impedes competition in the local service market and it is not in the public interest. I recommend that the Commission require Ameritech Illinois to abandon this unilateral bundling requirement and to provision DSL service regardless of which carrier is the voice services provider.

³⁸ Company response to Staff Data Requests 5.03(c) and (d).

753 **Q. Please summarize your critique of Ameritech Illinois with respect to**
754 **the requirements of checklist item 14 and the remedial actions that**
755 **you propose.**

756 A. Ameritech IL does not have an obligation to resell its DSL transport at
757 wholesale discount because it offers its DSL transport to ISPs, which are
758 not end-users and which in turn offer DSL transport to the end-users as
759 part of the DSL Internet. However, Ameritech IL or AADS' refusal to offer
760 DSL transport on a standalone basis to end-users, and its refusal to
761 provide DSL transport when alternative carrier provides the voice service
762 are inconsistent with the public interest. Moreover, by effectively bundling
763 Ameritech IL's voice service with its affiliate's (AADS) DSL transport
764 service, the Company erects a barrier to competition. An Ameritech DSL
765 customer who would like to switch voice carriers but not its DSL service, is
766 less likely and less willing to switch its voice service provider. This clearly
767 has a negative impact on competition in the wireline voice market.

768

769 Accordingly, I believe the Commission should require Ameritech IL to: a)
770 offer retail DSL to the end-user on a standalone basis; and b) provide DSL
771 transport regardless of which carrier provides the voice service.

772

773 **Q. Does this conclude your testimony?**

774 A. Yes.